the debtor's bankruptcy estate since, if the debtor won the lawsuit, any recovery would increase its estate. *Marathon*, 458 U.S. at 53-54.

Observing that the bankruptcy courts were not constituted as Article III tribunals, the Court struck down the bankruptcy jurisdictional provisions that allowed the bankruptcy court to enter a final judgment on such claims, because they permitted a non-Article III court to exercise plenary jurisdiction over, and finally resolve, a garden variety, state law breach of contract action. 458 U.S. at 71. The Court concluded that federal court resolution of such claims is properly reserved for Article III tribunals exercising the full judicial power of the United States -- i.e., the federal district courts. *Id.* at 87.

In reaching its conclusion, the Court distinguished between strict "bankruptcy" matters, such as causes of action unique to the bankruptcy process, and matters traditionally adjudicated in other courts, such as breach of contract actions and tort claims. *Marathon*, 458 U.S. at 84. The Court explained that matters of "public right," such as rights and actions created peculiarly as a matter of federal bankruptcy law, might be assigned for resolution by a non-Article III judicial officer. *Id.* at 83-84. In contrast, matters of "private right," including causes of action created and defined under state law, must be resolved in federal court only by an Article III judge. *Id.* Based on this analysis, the Court found the pre-*Marathon* jurisdictional scheme to be unconstitutional because it vested bankruptcy judges with too much authority.

Rather than address the constitutional defects of the pre-*Marathon* jurisdictional statutes by making bankruptcy judges Article III judges, Congress instead chose to limit the bankruptcy courts' ability to finally determine claims and causes of action by creating two fundamental classes of proceedings in bankruptcy cases under section 157 -- "core" matters that arise under the Bankruptcy Code or arise in a case under the Code, and "noncore" matters that "relate to" a bankruptcy case.

Consistent with this Court's mandate in *Marathon*, section 157(b)(1) vests the bankruptcy courts with plenary jurisdiction

only with respect to "public right" bankruptcy issues; namely, "core proceedings" that either (a) "*arise under* title 11" or (b) "*arise in* a case under title 11." 28 U.S.C. § 157(b)(1) (emphasis supplied). Proceedings that "*arise under* title 11" or "*arise in* a case under title 11" either (a) depend for their existence on a substantive provision of the Code and do not exist independently of the Code or (b) are "'administrative matters' that arise only in bankruptcy cases," "are not based on any right expressly created by [the Code]," and "have no existence outside of the bankruptcy." *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071, 1076 (9th Cir. 1991). In such proceedings, bankruptcy courts may hear and determine the merits of a claim and enter a final judgment subject to ordinary appellate review under 28 U.S.C. § 158. *See* 28 U.S.C. § 157(b). By expressly limiting the scope of the bankruptcy courts' plenary jurisdiction, however, Congress acted purposefully to *exclude* from such jurisdiction all "private right" controversies, such as ordinary state law causes of action like the state law breach of contract action at issue in *Marathon*.

"Noncore proceedings," or "private right" cases, are proceedings that are, at best, merely "related to a case under title 11." 28 U.S.C. § 157(c). Under the most widely accepted standard, a claim is "related to a case under title 11" if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984); *see Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995) (noting that nine courts of appeals had at that time adopted the *Pacor* test). In noncore proceedings, a bankruptcy court may not enter a final judgment but instead submits proposed findings of fact and conclusions of law to the district court, which must conduct a *de novo* review. 28 U.S.C. § 157(c). Indeed, "[a]ny final order or judgment" in a noncore proceeding "shall be entered by the district [court]," and not the bankruptcy court. *Id.*

The distinction between core matters that arise under the Bankruptcy Code or arise in a case under the Code, and noncore matters that merely relate to a case, was the key factor in

Congress's scheme to remedy the constitutional infirmities identified by the Court in *Marathon*. *Cf. Celotex*, 514 U.S. at 322 ("In my view the distinction between the jurisdiction to 'hear and determine' core proceedings on the one hand and the jurisdiction only to 'hear' noncore proceedings on the other hand is critical.") (Stevens, J. dissenting). The distinction is what prevents bankruptcy courts from entering final judgments on state law claims that are merely "related to" the bankruptcy estate.

The decision below treats as irrelevant the plain fact that the bankruptcy court entered a final money judgment on a garden-variety state law claim. Far from comporting with the jurisdictional limitations enacted by Congress in the wake of *Marathon*, the rule followed in the decision below ignores them:

> The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that "the Bankruptcy Court has jurisdiction to enter a monetary judgment on a disputed state law claim *in the course of making a determination that a debt is nondischargeable*."

Pet. App. 4a (citations omitted) (emphasis supplied). In the Ninth Circuit's view, once the pure bankruptcy law question of whether a debt is nondischargeable is raised in an adversary proceeding, bankruptcy courts *gain* jurisdiction to enter final judgments on the underlying merits of the allegedly nondischargeable cause of action (and, apparently, any other claim related to the controversy), regardless of the fact that there is no underlying basis for bankruptcy jurisdiction over such claims. *See* Pet. App. 5a, 6a, 26a, 27a.[2]

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[2] Congress expressly provided creditors the right to have a debt declared nondischargeable, and creditors with such claims may pursue the adjudication and liquidation of such claim outside of the bankruptcy court and process. 11 U.S.C. § 523. To protect such claims, creditors must seek a determination of

The Ninth Circuit cited two statutes in support of its rule. The first is section 105(a) of the Bankruptcy Code. Pet. App. 5a. But section 105(a) does not and cannot confer independent jurisdiction upon a bankruptcy court where jurisdiction does not otherwise exist. *See Celotex v. Edwards*, 514 U.S. 300, 326-27 (1995) (Stevens and Ginsburg, J.J., dissenting) (stating the "[i]t cannot be the law, however, that a bankruptcy judge has jurisdiction to enter any conceivable order that a party might request simply because § 105(a) authorizes some injunctions or because the request was first made in a pending Title 11 case," and citing the leading bankruptcy treatise for the proposition that "Section 105 'is not an independent source of jurisdiction, but rather it grants the courts flexibility to issue orders which preserve and protect their jurisdiction'") (citations omitted); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 224-25 (3d Cir. 2005) ("[A]s the statute makes clear, § 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) ("Section 105(a) . . . does not broaden the bankruptcy court's jurisdiction.").

The second statute relied upon by the Ninth Circuit is 28 U.S.C. § 1367, which confers "supplemental" jurisdiction upon federal district courts. Pet. App. 6a. The Ninth Circuit stated that "[a] bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy,'" and that "Congress [has] expanded the Bankruptcy Court's Article I jurisdiction by granting federal

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nondischargeability, or the claim will be discharged. Under the Ninth Circuit's rule, however, once a creditor seeks a simple declaration of nondischargeability, the bankruptcy court has jurisdiction to determine the underlying claim. The Ninth Circuit's rule amounts to a waiver of the creditor's fundamental right to choose when, where, and how to assert its underlying claim. This cannot be what Congress intended under the bankruptcy statutes, as enacted.

district courts with 'original and exclusive jurisdiction of all cases under title 11.'" Pet. App. 6a (citations omitted). Ignoring the principles enunciated in *Marathon* and blurring the distinctions among (a) the jurisdiction that Congress is empowered to grant, (b) the jurisdiction that Congress has, in fact, granted to Article III courts, and (c) the limited jurisdiction that Congress may grant to Article I courts, the court concluded:

> Thus, at present, the bankruptcy court's "related to" jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 "over all claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

Pet. App. 6a.

Simply put, the rule followed by the Ninth Circuit in this case ignores the constitutional issues identified by the Court in *Marathon* and entirely eviscerates the prophylactic measures that Congress adopted in response to *Marathon*. *See Marathon*, 458 U.S. at 71 ("But the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case."). That Congress has granted to *Article III district courts* the broad jurisdiction provided in 28 U.S.C. § 1367 does not change the fact that bankruptcy courts are *not* Article III courts; nor does it change the fact that the jurisdictional grant in bankruptcy cases is limited.

Here, instead of simply deciding that the underlying debt that Sokoloff alleged Sasson owed was *excepted from discharge*, the bankruptcy court adjudicated Sasson's *liability* and entered its findings as a final judgment for money damages.[3] In doing

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[3] Section 523 does *not* create a *right of recovery* but simply permits the bankruptcy court to make a *determination* as to

so, the bankruptcy court improperly entered a final judgment on a garden-variety state law claim without complying with the restrictions imposed by Congress with respect to noncore matters, which limit the bankruptcy court's decision-making authority to proposing findings of fact and conclusions of law. *See* 28 U.S.C. § 157(c). In affirming this result, the Ninth Circuit relied upon a rule of law that permits precisely what Congress precluded bankruptcy courts from doing when it enacted 28 U.S.C. §§ 157(b) & (c). In short, the Ninth Circuit's interpretation of 28 U.S.C. §§ 157, 1334 and 1367, and 11 U.S.C. § 105 expands the bankruptcy court's jurisdiction in direct conflict with the constitutional limitations identified by the Court in *Marathon*. This unconstitutional result should not be allowed to stand.

Numerous courts have reached the conclusion that bankruptcy courts are not automatically empowered to enter a judgment on the underlying claim when the pure bankruptcy law issue of nondischargeability has been raised. *See, e.g.*, *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995); *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990); *Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643,

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dischargeability. *Butler v. Clark (In re Clark)*, 202 B.R. 243, 257 n.38 (Bankr. W.D. Mich. 1996) ("The Court recognizes that no independent cause of action for defalcation exists under authority of § 523(a)(4), but that substantive non-bankruptcy law will determine whether defalcation has occurred."); *In re Verdon*, 95 B.R. 877, 881-82 (Bankr. N.D.N.Y. 1989) (noting that section 523 "creates a cause of action for nondischargeability, not damages"); *see also James v. McCoy*, 56 F. Supp. 2d 919, 935 (S.D. Ohio 1998) (discussing nondischargeability statutes and stating that "[t]hese statutes do not create a private right of action, but merely set forth the criteria that a bankruptcy court must follow in determining dischargeability of debts").

645 (7th Cir. 1987); *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985). By adhering to the distinctions that Congress made in enacting section 157, and by holding that the district court's "supplemental jurisdiction" does not apply to the limited jurisdiction of the bankruptcy courts, these courts have properly avoided an interpretation of the bankruptcy jurisdictional statutes that runs afoul of the constitutional principles addressed in *Marathon*. The decision below is erroneous precisely because it creates a constitutional conflict where one need not exist. *See Legal Servs. Corp.*, 531 U.S. at 545 ("It is well understood that when there are two reasonable constructions for a statute, yet one raises a constitutional question, the court should prefer the interpretation which avoids the constitutional issue.").

B The Decision Below Erroneously Interprets The Specific Bankruptcy Jurisdiction Statutes As Controlled By The General Supplemental Jurisdiction Statute.

The decision below also violates the canon of statutory construction providing that the terms of a statute that specifically address the issue at hand will govern over a more general statute that arguably could be read as being broadly applicable. *See Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 (1990) ("It is an elementary tenet of statutory construction that where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . . .") (quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) ("[W]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."). As the Court has explained:

> The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general

> manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all.

Radzanower, 426 U.S. at 153.

Title 28, section 1334 constitutes a specific and limited grant of jurisdiction to federal courts to hear and determine only certain types of matters when bankruptcy jurisdiction and the provisions of the Bankruptcy Code are involved. *See* 28 U.S.C. § 1334(b). The types of matters that federal courts are entitled to adjudicate under their *bankruptcy* jurisdiction, as compared with other fonts of federal jurisdiction, are specifically set forth in section 1334. *Id.* Within the context and confines of a bankruptcy case, Congress gave federal courts jurisdiction to adjudicate *only* claims: (a) "arising under title 11," (b) "arising in" a case under title 11, or (c) "related to" such a case. *Id.* Congress could have, but did not, give federal courts jurisdiction in bankruptcy cases to hear and determine "all claims," or claims that are other than "related to" the bankruptcy estate. Instead, Congress's grant of jurisdiction in bankruptcy matters is specific, limited, and tethered to either the provisions of the Bankruptcy Code or the *res* being administered in bankruptcy.

By contrast, 28 U.S.C. § 1367 applies "in any civil action of which the district courts have original jurisdiction." In that context, the district court acquires "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." *Id.* Thus, unlike 28 U.S.C. §§ 1334 and 157, which apply specifically to bankruptcy matters and circumscribe the jurisdiction of the Article I bankruptcy courts, 28 U.S.C. § 1367's grant of jurisdiction to the Article III district courts is not limited to a specific type of case or controversy, but applies more generally in "any civil action." The grant of jurisdiction under section 1367 has been described as being at the outer limit

of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1509 (3d Cir. 1996) ("the language and history of § 1367 support its extension to the limits that Article III permits"); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In holding that the general grant of jurisdiction "at the outer limited of Article III" under 28 U.S.C. § 1367 supplants the more specific and limited grant of jurisdiction under 28 U.S.C. §§ 157 and 1334, the decision below plainly violates this Court's precedents and canons of statutory construction.

C. The Decision Below Renders The Bankruptcy Court's "Related To" Jurisdiction Superfluous.

Not only does the rule followed by the Ninth Circuit allow a statute couched in general terms to supplant a specific grant of jurisdiction, it also renders the specific grant of jurisdiction in 28 U.S.C. § 1334 superfluous, since it is subsumed within the broad terms of 28 U.S.C. § 1367. As this Court has explained, however, "[i]t is, of course, a basic canon of statutory construction that we will not interpret a congressional statute in such a manner as to effectively nullify an entire section." *Dodd v. United States*, 545 U.S. 353, 358 (2005) (citing *Duncan v. Walker*, 533 U.S. 167, 174 (2001)) ("a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"); *see also Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) (construing a statute in a manner that avoids making one provision redundant).

Although Congress intended the "related to" jurisdiction provided by section 1334(b) to be broad, it is not without limits. *See Celotex*, 514 U.S. at 308 (noting that "a bankruptcy court's 'related to' jurisdiction cannot be limitless"); *see also Pacor*, 743 F.2d at 994 ("The jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is not without limit, however, and there is a statutory, and eventually constitutional, limitation to the power of a bankruptcy court."). Accordingly, courts generally interpret the phrase "related to" as giving bankruptcy

courts jurisdiction over only those claims that "could conceivably have any effect on the estate being administered in bankruptcy." *Celotex*, 514 U.S. at 308 n.6.

Supplemental jurisdiction under section 1367, by contrast, is exceedingly broad, giving federal district courts jurisdiction over any claim that is "so related to claims in the action within the [court's] original jurisdiction that they form the same case or controversy under Article III of the United States Constitution." As noted, some courts have opined that the supplemental jurisdiction granted to district courts is the outer limit of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P.*, 101 F.3d at 1509 ("the language and history of § 1367 support its extension to the limits that Article III permits"); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In this case, the "original jurisdiction" required before the application of section 1367 could even be considered is, clearly, the bankruptcy jurisdiction provided by section 1334. Under the rule followed in the decision below, if a party to the bankruptcy case brings *any* claim -- between parties already in the bankruptcy case or not -- that shares a "common nucleus of operative fact" with *any* other claim that "arises under title 11," "arises in a title 11 case," or is even just "related to" the bankruptcy case, the bankruptcy court has plenary jurisdiction to enter a final judgment on that claim.

In allowing a bankruptcy court to utilize the district court's supplemental jurisdiction, the decision below completely eliminates the "related to" limitation contained in section 1334 and 157 and greatly expands the bankruptcy court's jurisdiction. For example, under the rule followed in the decision below, if a third party (and non-participant in the bankruptcy case) had agreed to indemnify a *creditor* for any amounts that the debtor owed, a bankruptcy court would have supplemental jurisdiction, both to bring that third-party before the court and to determine the creditor's state law indemnification claims against the third party on the merits, even though the resolution of such claims would have absolutely no effect on the estate because they have no bearing on the amount the creditor can recover from the

debtor. The same would be true in ordinary tort actions in which a creditor seeks contribution or an apportionment of liability involving a third party. As long as the third-party claims arise out of a common nucleus of operative fact as the claim between the creditor and debtor, the bankruptcy court would have supplemental jurisdiction over those claims.

The decision below wholly ignores the reality that permitting an Article I bankruptcy court to exercise an Article III district court's supplemental jurisdiction over state law claims that are not within the specific jurisdiction granted in section 1334 allows the general supplemental jurisdiction statute to nullify the jurisdictional limits provided in 28 U.S.C. §§ 1334 and 157, statutes that Congress specifically tailored to apply in bankruptcy cases. That result not only conflicts with this Court's well-established rules of construction, *see Guidry*, 493 U.S. at 375; *Morton*, 417 U.S. at 550-51, it also is completely unnecessary, *see Radzanower*, 426 U.S. at 153 (noting that a general statute should not nullify a specific one "unless it is absolutely necessary to give the [general] act such a construction, in order that its words shall have any meaning at all"). Section 1367 is not stripped of its effect if it is not applied in bankruptcy; it still applies in civil actions before Article III district courts outside of the bankruptcy context. *See* 28 U.S.C. § 1367. However, if it is applied in bankruptcy, as discussed above, the "related to" jurisdiction specifically provided for by Congress in section 1334(b) serves no purpose.

The foregoing makes plain that, if the decision below is permitted to stand, bankruptcy courts will not have to consider whether a claim "affects" the bankruptcy estate in order to determine whether they have jurisdiction. Instead, litigants would simply argue that their claim is supplemental to some other claim in the bankruptcy case, and thus within the bankruptcy court's jurisdiction. Such an interpretation flies in the face of this Court's long-standing canons of statutory construction and could not have been intended by Congress. Accordingly, the Court should grant certiorari to review the decision below.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

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(2)

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IN THE

Supreme Court of the United States

ROBERT SASSON,
Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 3,200 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 300,000 bankruptcy cases filed each year. NACBA is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. NACBA has filed *amicus curiae* briefs in various appellate courts seeking to protect the rights of consumer bankruptcy debtors, including briefs filed in this Court. *E.g., Kontrick v. Ryan*, 124 S.Ct. 906 (2004).

The NACBA membership has a vital interest in the Court's decision whether to grant review of this matter. NACBA members primarily represent individual low- and moderate-income wage-earners. These debtors and their families have a great need for the "breathing spell" from the burdens of their creditors as Congress intended. Litigating creditor motions to determine whether a debt may be discharged in bankruptcy may be a necessary part of a bankruptcy case because such motions help to define the nature and extent of claims against a debtor's estate. But it does not necessarily follow that

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[1] All parties to this case have consented to the filing of this brief, and letters indicating consent were submitted to the Court prior to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, their counsel, or their members made a monetary contribution to the preparation of this brief.

the debtor must then be forced to also litigate in bankruptcy court the merits of a claim that is ultimately determined to be non-dischargeable. Debtors of limited means simply cannot handle the burdens of defending creditor lawsuits regarding debts that, by definition, are against a debtor's person and no longer affect the estate in bankruptcy. Unless this Court grants certiorari and resolves the split among the circuit courts on the question whether bankruptcy courts may lawfully exercise "supplemental jurisdiction" to enter judgments on non-dischargeable debts, NACBA's constituency faces differing treatment in bankruptcy regarding those debts based solely upon where their petition is filed.

Additionally, NACBA is gravely concerned that holding such claims to fall within the "supplemental jurisdiction" of the bankruptcy courts would turn the very purpose of bankruptcy on its head. Forcing a debtor of limited means to litigate the merits of a non-dischargeable debt during the course of a bankruptcy proceeding undermines the debtor protections provided in bankruptcy. Bankruptcy instead becomes a debt-collection device for the benefit of creditors, whose leverage in obtaining a settlement or judgment against a debtor is increased by the debtor's inability, for lack of financial resources, to adequately litigate the merits of a debt bearing no significance on the administration of his estate. Moreover, forcing a debtor to engage in collateral litigation regarding non-dischargeable debts turns the debtor's (and the bankruptcy court's) focus away from the only real purpose of bankruptcy – the orderly administration of the estate and repayment of estate assets to creditors of the estate.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEAL HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY GO BEYOND THEIR STATUTORILY LIMITED JURISDICTION TO EXERCISE "SUPPLEMENTAL JURISDICTION" UNDER SECTION 1367 OVER MATTERS THAT DO NOT AFFECT THE ESTATE.

The courts of appeal have split on the question whether bankruptcy courts may exercise supplemental jurisdiction under 28 U.S.C. § 1367 over claims which are "related" to claims in bankruptcy because they arise under a common nucleus of operative facts as claims in a bankruptcy case, but which do not otherwise fall within the specific grant of "related to" jurisdiction to bankruptcy courts as set forth in 28 U.S.C. § 1334(b).

Here, the issue presents itself in the context of a bankruptcy court's determination whether a preexisting debt may be excluded from discharge in bankruptcy pursuant to 11 U.S.C. § 523(a).[2] There is no question that dischargeability determinations fall within Congress' specific grant of jurisdiction to the bankruptcy courts, because that issue "arise[s] under" a specific provision of the Bankruptcy Code. *See* 28 U.S.C. § 1334(b). That a bankruptcy court would have jurisdiction to determine whether or not a debt may be discharged makes perfect sense – the

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[2] The Bankruptcy Code provides that creditors may seek a declaration from a bankruptcy court that certain types of claims are excluded from discharge in bankruptcy and thus the creditor may continue to sue the debtor to recover the debt after the bankruptcy. Debts which may be determined to be non-dischargeable include, *inter alia*, (i) debts obtained by fraud, false pretenses, or a false representation (11 U.S.C. § 523(a)(2)), (ii) debts for fraud or defalcation while acting in a fiduciary capacity (11 U.S.C. § 523(a)(4)), and (iii) debts for willful or malicious injury to another entity or the property of another entity (11 U.S.C. § 523(a)(6)).

bankruptcy court, after all, is charged with jurisdiction over a debtor's estate and claims against the estate. *See Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) (bankruptcy court jurisdiction "is premised on the debtor and his estate"). The bankruptcy court therefore must have jurisdiction to decide whether a claim is, in fact, a claim against the estate that falls within the court's jurisdiction.

Once a bankruptcy court decides that a claim is non-dischargeable, however, the debt becomes personal to the debtor and has no bearing whatsoever on the res of the estate. Such a debt is specifically contemplated to be paid from post-bankruptcy assets. *See, e.g., Berger, Shapiro, & Davis, P.A. v. Haeling (In re Foos)*, 183 B.R. 149, 162 (Bankr. N.D. Ill. 1995) (once a creditor successfully obtains a declaration that a debt is non-dischargeable, the debtor "would bear the burden of satisfying that debt out of post-bankruptcy assets . . . [which are] not property of the estate"); *In re Boggan*, 125 B.R. 533, 534 (Bankr. N.D. Ill. 1991) ("The holder of a non-dischargeable claim has remedies against the debtor personally and the debtor's post-bankruptcy assets that other creditors do not have"). Indeed, this is precisely the reason creditors seek non-dischargeability determinations: in addition to obtaining a pro-rata distribution on the debt from debtor's estate, a creditor can seek full recovery of the debt from a post-bankruptcy debtor whose debts have otherwise been discharged.

Because a non-dischargeable debt does not impact the estate, the bankruptcy court's jurisdiction over the claim – typically a claim arising under state law based on tort or contractual theories – should end. *Cf. Hood*, 541 U.S. at 450 ("the bankruptcy court's jurisdiction is premised on the res, not on the persona"). However, creditors seeking a declaration regarding the dischargeability of a debt also commonly

seek judgments from the bankruptcy courts on the merits of the underlying claims. *See* Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 AM. BANKR. L.J. 115, 116 (2000) ("Most" nondischargeability determinations "not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts").

The jurisdiction specifically conferred upon bankruptcy courts is limited to "civil proceedings arising under Title 11, or arising in or related to cases under Title 11" that could potentially impact the res of a debtor's estate. 28 U.S.C. § 1334; *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (Congress "intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with *all matters connected to the bankruptcy estate*) (citation omitted) (emphasis added)). Because non-priority, non-dischargeable debts cannot, by definition, impact the res of a bankruptcy estate, bankruptcy courts lack subject matter jurisdiction over disputes regarding the claims underlying such debts. *See id.* at 307 ("the Bankruptcy Court's jurisdiction [over a proceeding] must be based on the 'arising under,' 'arising in,' or 'related to' language of §§ 1334(b) and 157(a)").

Notwithstanding the Court's statements in *Celotex* regarding the proper bases of bankruptcy court jurisdiction, the circuits have split on the question whether bankruptcy courts may go *beyond* their specific grant of jurisdiction in 28 U.S.C. § 1334 to also exercise "supplemental jurisdiction" under 28 U.S.C. § 1367 over claims which the court would otherwise lack jurisdiction concerning because they do not impact the res of the bankruptcy estate.

The Third, Fifth, Seventh, and Eleventh Circuits prohibit bankruptcy courts from exercising supplemental jurisdiction over claims which do not impact the res – that is, claims which do not affect payments to other creditors from the bankruptcy estate or the administration of the estate – even if the interests of "judicial economy" arguably may be served if the court hears the dispute. As aptly explained by the Eleventh Circuit: "Overlap between the bankrupt's affairs and another dispute is insufficient [to warrant bankruptcy court's exercise of jurisdiction] unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction." *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990) (footnotes omitted).[3] These decisions reflect an understanding of the specialized jurisdiction extended to bankruptcy courts. Section 1367 of Title 28 is, of course, readily applied to extend the jurisdiction of the district courts while such courts sit under heads of

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[3] *See also Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 302 (3d Cir. 1985) ("The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [present section 1334(b)]") (quotation omitted); *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995) (bankruptcy court's exercise of "ancillary and pendent jurisdiction could subsume the more restrictive 'related to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous"); *Wisconsin Dep't of Industry, Labor, and Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645 (7th Cir. 1987) (it is not sufficient for there to be a "logical relationship or 'nexus' between a proceeding and a bankruptcy case" because "the 'related to' jurisdiction encompasses only disputes that affect the payments to the bankrupt's other creditors or the administration of the bankrupt's estate").

jurisdiction that provide a broad general jurisdiction over "civil actions" of the type referenced in § 1367. (28 U.S.C. § 1367.) It is far less clear that section 1367 can appropriately be applied to extend the specialized jurisdiction of the district courts, and especially the bankruptcy courts, to administer cases and *in rem* "civil proceedings" (28 U.S.C. § 1334(b)) in bankruptcy.

The Second, Fourth, Sixth, Eighth, and Ninth Circuits, on the other hand, have permitted bankruptcy courts to go beyond the specific grant of jurisdiction under section 1334(b) to hear disputes over non-dischargeable state law claims based upon an alleged factual nexus between a bankruptcy proceeding and the underlying state law claim. That is, those circuits permit bankruptcy courts to exercise supplemental jurisdiction under section 1367, over claims which do not impact or affect a debtor's estate in any way.[4] In doing so, these courts have relied upon asserted interests of judicial economy and the bankruptcy courts' "equitable jurisdiction," and not on any finding that the debt could have any effect on the bankruptcy estate. *See, e.g., Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997) ("If it is acknowledged as beyond question that a complaint to

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[4] *See also Hall v. Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) (bankruptcy court has authority to enter money judgment on non-dischargeable debt because "to be non-dischargeable, the court must have found a debt to be due and owing"); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) (amount of liability on non-dischargeable debt was "properly determined" by the bankruptcy court because "if it is acknowledged . . . that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment" (internal citations and quotations omitted)); *Abramowitz v. Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993) ("[t]he small step the bankruptcy court took between determining [debtor's] liability for fraud and entering a money judgment against [debtor] as a result of that fraud was a logical exercise of related to jurisdiction").